IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2048 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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C K LAKHANI & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HS MUNSHAW for Applicant(s) : 1 - 3.
MR MR MENGDEY, APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/10/2007

ORAL JUDGMENT

The petitioners herein have prayed for quashing of a criminal complaint No.6861 of 1998 pending before the Chief Judicial Magistrate, Bhavnagar and the process issued thereon by the learned Judge.

2. The petitioners were at the relevant time City Engineer, Executive Engineer and Additional Assistant Engineer respectively of Bhavnagar Municipal Corporation. Criminal complaint came to be filed against them on 21.12.98 alleging, inter alia, that despite the stay granted by the Civil Court, Bhavnagar in Regular Civil Suit No.75/95, the petitioners pulled down certain construction put up

by the complainant.

3. It is the case of the petitioners that the stay order granted by the Civil Court was a conditional one and did not permit the petitioners from demolishing the construction without following due process of law. It is the case of the petitioners that after following all necessary requirements, the construction came to be pulled down.

4. Though served, no one appeared for the complainant. I have heard learned advocate Mr.Munshaw for the petitioners and learned APP Mr.Mengdey for the State.

5. It is not in dispute that the petitioners were public servants discharging their official duties at the relevant time. It is also not in dispute that sanction under section 197(1) of the Criminal Procedure Code was not obtained before the learned Judge took cognizance of the complaint filed before him. It cannot be disputed that the petitioners were discharging their duties in their official capacity and that, therefore, sanction of the Government was necessary, particularly when the stay granted by the civil court was a conditional one and it is the case of the petitioners that action for demolition was undertaken only after due process of law. In the facts of the present case, it cannot be stated that the action of the petitioners was

colourable exercise of power or wholly malafide. Under the circumstances, since the cognizance taken by the learned Magistrate was without the necessary sanction, the same is required to be quashed.

6. In the result, the petition is allowed. The impugned complaint No.6861 of 1998 and the cognizance thereof taken by the learned Magistrate are quashed. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)